

Labor Issue 1: Fair Competition for Washington Contractors

ENGROSSED SUBSTITUTE HOUSE BILL 2864

State of Washington

60th Legislature

2008 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Ormsby, Wood, Barlow, Hasegawa, and Simpson)

READ FIRST TIME 02/05/08.

1 AN ACT Relating to filing certified payroll records on public works
2 projects; amending RCW 39.12.030 and 39.12.040; and adding a new
3 section to chapter 39.12 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 39.12.030 and 1989 c 12 s 9 are each amended to read
6 as follows:

7 (1) The specifications for every contract for the construction,
8 reconstruction, maintenance, or repair of any public work, to which the
9 state or any county, municipality, or political subdivision created by
10 its laws is a party, shall contain a provision stating the hourly
11 minimum rate of wage, not less than the prevailing rate of wage, which
12 may be paid to laborers, workers, or mechanics in each trade or
13 occupation required for such public work employed in the performance of
14 the contract either by the contractor, subcontractor or other person
15 doing or contracting to do the whole or any part of the work
16 contemplated by the contract, and the contract shall contain a
17 stipulation that such laborers, workers, or mechanics shall be paid not
18 less than such specified hourly minimum rate of wage.

1 (2) For purposes of compliance with this chapter, including
2 identifying certified payroll records to be requested from a contractor
3 or subcontractor, every contract for the construction, reconstruction,
4 maintenance, or repair of any public work, to which the state or any
5 county, municipality, or political subdivision created by its laws is
6 a party, must contain a provision requiring the general contractor to
7 submit a list of all subcontractors that will supply any off-site
8 prefabricated, nonstandard, project-specific products. The list must
9 identify all products supplied, the name of each subcontractor, the
10 employer identification number of each subcontractor, and each
11 product's anticipated cost.

12 **Sec. 2.** RCW 39.12.040 and 2007 c 210 s 4 are each amended to read
13 as follows:

14 (1) (a) Except as provided in subsection (2) of this section, before
15 payment is made by or on behalf of the state, or any county,
16 municipality, or political subdivision created by its laws, of any sum
17 or sums due on account of a public works contract, it shall be the duty
18 of the officer or person charged with the custody and disbursement of
19 public funds to require the contractor and each and every subcontractor
20 from the contractor or a subcontractor to submit to such officer a
21 "Statement of Intent to Pay Prevailing Wages". For a contract in
22 excess of ten thousand dollars, the statement of intent to pay
23 prevailing wages shall include:

24 ~~((a))~~ (i) The contractor's registration certificate number; and
25 ~~((b))~~ (ii) The prevailing rate of wage for each classification of
26 workers entitled to prevailing wages under RCW 39.12.020 and the
27 estimated number of workers in each classification. Each statement of
28 intent to pay prevailing wages must be approved by the industrial
29 statistician of the department of labor and industries before it is
30 submitted to said officer.

31 (b) Unless otherwise authorized by the department of labor and
32 industries, each voucher claim submitted by a contractor for payment on
33 a project estimate shall state that the prevailing wages have been paid
34 in accordance with the prefiled statement or statements of intent to
35 pay prevailing wages on file with the public agency.

36 (c) For purposes of compliance with this chapter, including
37 identifying certified payroll records to be requested from a contractor

1 or subcontractor, for a public works project involving the off-site
2 prefabrication of a nonstandard, project-specific product, before final
3 acceptance of the project, the awarding agency must require the
4 contractor or subcontractor of all such products to submit a list to
5 the awarding agency and to the department of labor and industries. The
6 list must be certified by the contractor or subcontractor and identify:
7 (i) The contractor or subcontractor's name; (ii) the contractor or
8 subcontractor's employer identification number; (iii) the contract or
9 subcontract amount; (iv) the labor hours expended producing the
10 product; and (v) hourly minimum rate of wages paid in each trade or
11 occupation producing the product.

12 (d) Following the final acceptance of a public works project, it
13 shall be the duty of the officer charged with the disbursement of
14 public funds, to require the contractor and each and every
15 subcontractor from the contractor or a subcontractor to submit to such
16 officer an "Affidavit of Wages Paid" before the funds retained
17 according to the provisions of RCW 60.28.010 are released to the
18 contractor. Each affidavit of wages paid must be certified by the
19 industrial statistician of the department of labor and industries
20 before it is submitted to said officer.

21 (2) As an alternate to the procedures provided for in subsection
22 (1) of this section, for public works projects of two thousand five
23 hundred dollars or less and for projects where the limited public works
24 process under RCW 39.04.155(3) is followed:

25 (a) An awarding agency may authorize the contractor or
26 subcontractor to submit the statement of intent to pay prevailing wages
27 directly to the officer or person charged with the custody or
28 disbursement of public funds in the awarding agency without approval by
29 the industrial statistician of the department of labor and industries.
30 The awarding agency shall retain such statement of intent to pay
31 prevailing wages for a period of not less than three years.

32 (b) Upon final acceptance of the public works project, the awarding
33 agency shall require the contractor or subcontractor to submit an
34 affidavit of wages paid. Upon receipt of the affidavit of wages paid,
35 the awarding agency may pay the contractor or subcontractor in full,
36 including funds that would otherwise be retained according to the
37 provisions of RCW 60.28.010. Within thirty days of receipt of the

1 affidavit of wages paid, the awarding agency shall submit the affidavit
2 of wages paid to the industrial statistician of the department of labor
3 and industries for approval.

4 (c) A statement of intent to pay prevailing wages and an affidavit
5 of wages paid shall be on forms approved by the department of labor and
6 industries.

7 (d) In the event of a wage claim and a finding for the claimant by
8 the department of labor and industries where the awarding agency has
9 used the alternative process provided for in subsection (2) of this
10 section, the awarding agency shall pay the wages due directly to the
11 claimant. If the contractor or subcontractor did not pay the wages
12 stated in the affidavit of wages paid, the awarding agency may take
13 action at law to seek reimbursement from the contractor or
14 subcontractor of wages paid to the claimant, and may prohibit the
15 contractor or subcontractor from bidding on any public works contract
16 of the awarding agency for up to one year.

17 (e) Nothing in this section shall be interpreted to allow an
18 awarding agency to subdivide any public works project of more than two
19 thousand five hundred dollars for the purpose of circumventing the
20 procedures required by ((RCW 39.12.040(1))) subsection (1) of this
21 section.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.12 RCW
23 to read as follows:

24 If an interested party makes a written request of a contractor or
25 subcontractor to file certified payroll records under rules regarding
26 payroll which have been adopted by the department of labor and
27 industries to enforce this chapter and the records requested are for
28 the off-site prefabrication of a nonstandard, project-specific product,
29 the contractor or subcontractor must file the certified copy of the
30 payroll records only with the awarding agency.

--- END ---



WASHINGTON STATE BUILDING & CONSTRUCTION TRADES COUNCIL, AFL-CIO

AFFILIATED WITH THE BUILDING & CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

MIKE GRUNWALD
President

DAVID JOHNSON
Executive Secretary

Off Site Fabrication

It's time Washington State join other western states, like California and Oregon, to address the unfair advantages experienced by their in-state contractors attempting to compete with out-of-state contractors bidding on public works projects. It is one of the outsourcing problems Washington businesses face and it primarily affects small fabrication employers. Washington's fabricators deserve similar protections from unfair competition from out-of-state fabricators who don't pay the prevailing wage. Legislation needs to be passed to address boarder raiding where contractors just across the Idaho-Washington border (Canadian too) experience unfair advantage over Washington business bidding on Washington public works contracts. Without this update to our laws, Washington fabrication contractors have three options, either:

- Move out of State
- Cheat on Wages
- Or Watch their Business Die

It's very difficult for Washington's fabrication businesses to successfully bid against out-of-state business on a public works project. Over \$2.5 million dollars was the stated loss by small Washington businesses last session; labor believes that's much higher when lost wages are factored too. For example, work was lost on the Spokane Memorial Arena; workers were paid \$9-12 less than the prevailing wage, not to mention the precast concrete losses to Canada.

Washington's registered women and minority businesses, who abide by responsible contracting criteria, also struggle to establish their business in the construction industry due to the lack of protection in the law allowed by other western states. Without addressing the off-site prefabrication issue for Washington fabricators, the disparity and difficulty for our state's women, minority and general fabricators will perpetuate an unfair advantage for out-of-state contractors bidding on Washington's public works projects.

Imagine a Washington small business owner witnessing their own local public works projects being constructed by out-of-state contractors. They fought for a local bond levy, pay the taxes to construct the project to better their community and cringe to watch our state losing tax dollars and local revenues for contractors and workers. Business and labor needs CPARB and the Legislature's help to equalize competition on public works construction projects.

Solution: First document the condition by requiring the filing of certified payroll records for the off-site prefabrication of nonstandard, project-specific ("off-site") items on public works contracts. Require public works contractors to contain a provision requiring the general contractor to submit a list of all subcontractors supplying off-site products. The list must identify all off-site products supplied, the name and EIN of each subcontractor, and each product's anticipated cost. Before final acceptance of a project involving off-site products, the awarding agency must require the contractor and subcontractor of off-site products to submit this list to the awarding agency and to the Department of Labor and Industries. The list must be certified and must identify: 1) the contractor or subcontractor's name; 2) the EIN; 3) the contract or subcontract amount; 4) the labor hours expended producing the product; and 5) the hourly minimum rate of wages paid in each trade or occupation. Also, if an interested party makes a request for certified payroll records under L&I's payroll rules, and the request is for records for off-site work, the contractor or subcontractor must file the records only with the awarding agency (and not also with L&I as required by rule for all payroll requests). Washington contractors already provide this information under RCW 39.12, out-of-state contractors and subcontractors should be required to adhere to the same procedures on Washington's public works construction projects. **Labor strongly urges CPARB to suggest these changes to the 2009 Legislature in support of Washington's small and minority construction businesses.**

